

Fiscal Service, Treasury

§ 256.32

§ 256.21 Are Judgment Fund payments offset to collect administrative debts?

Yes, separate and apart from its role as administrator of the Judgment Fund, Fiscal Service, in its capacity as disbursing official for the executive branch, offsets Judgment Fund payments to collect delinquent, nontax Federal debts through the Treasury Offset Program (TOP). This rule applies only to the setoff of Judgment Fund payments prior to payment certification, pursuant to 31 U.S.C. 3728, and not to disbursing official offsets pursuant to other authorities. (See 31 CFR 285.5 for requirements for disbursing official offset of past-due delinquent, nontax debts pursuant to the authority set forth in 31 U.S.C. 3716.)

§ 256.22 How does Fiscal Service set off an award under 31 U.S.C. 3728?

The setoff statute establishes a two-step process to collect debts that are owed to the United States. If an agency notifies Fiscal Service of a debt for which a court has issued a judgment against a debtor in favor of the United States, or for which the IRS has issued a tax levy pursuant to 26 U.S.C. 6331, then Fiscal Service will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then Fiscal Service must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then Fiscal Service will set off the debt. If the debtor does not consent, then Fiscal Service will withhold from payment an amount equal to the debt. Fiscal Service also may withhold an amount sufficient to pay the cost of litigating the debt to judgment. Fiscal Service then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, Fiscal Service will set off the debt. If the suit is unsuccessful, Fiscal Service will pay the withheld amount with interest accruing from the date when payment would have been made.

Subpart D—Interest and Litigation Costs

§ 256.30 When does the Judgment Fund pay interest?

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e-16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).

§ 256.31 How does Fiscal Service compute interest on payments?

Fiscal Service computes interest according to the terms of the statute that waives sovereign immunity for interest to be awarded against the Federal government. The statute that allows interest must be cited on the appropriate Judgment Fund form.

§ 256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?

31 U.S.C. 1304(b) specifies that a "transcript of the judgment" must be filed with the Secretary of the Treasury. This means that a copy of the judgment must be filed with the Judgment Fund Branch for interest to accrue on a judgment of a federal district court, the Court of Appeals for the Federal Circuit, or the United States Court of Federal Claims. By practice, the successful plaintiff files a copy of the judgment. Whoever submits the judgment should include a cover letter explaining that it is being submitted to preserve interest rights under 31 U.S.C. 1304. A copy of the judgment and cover letter must be sent to the Bureau of the Fiscal Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>.